Arbitration Procedures and Practice in Turkey: Overview

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A Q&A guide to arbitration law and practice in Turkey.

The country-specific Q&A guide provides a structured overview of the key practical issues concerning arbitration in this jurisdiction, including any mandatory provisions and default rules applicable under local law, confidentiality, local courts' willingness to assist arbitration, enforcement of awards and the available remedies, both final and interim.

Use of Arbitration and Recent Trends

1. How is commercial arbitration used and what are the recent trends?

Use of Commercial Arbitration and Recent Trends

In Turkey, arbitration traditionally evolved as a dispute resolution mechanism, which was used more frequently in large commercial disputes where a foreign party is involved and mostly when a legal counsel is involved in the preparation of the principal contract between the parties. For all other matters, particularly concerning disputes of smaller value, Turkish parties tended to grant jurisdiction to the Turkish courts.

Although arbitration is still underused in Turkey when compared to litigation, there is an upward trend in the use of commercial arbitration. Indeed, state courts started to lose their functionality with the substantially long length of proceedings and the concurrent promotion of the Istanbul Arbitration Centre (ISTAC). This paved the way for commercial disputes to be referred to arbitration more often.

In recent years, there have also been several inducements for the use of arbitration introduced by legislative activities. Accordingly, court practice on ruling fixed court fees instead of proportional for the enforcement of foreign arbitral awards became more settled, although there are still precedents favouring proportional fees. Also, certain provisions have been introduced to clarify which courts have jurisdiction over arbitration-related actions. With the initiatives of ISTAC and the amendment of key regulations, arbitration has been legally accepted as an alternative to state courts for the resolution of disputes arising from public procurement contracts.

According to the statistics published by ISTAC for the period between 26 October 2015 and 1 March 2018, 53% of the cases brought before ISTAC have an international nature, and 47% are domestic cases. In general, the values in dispute vary between

TRY15,000 to TRY800 million. 47% of the cases are worth more than TRY2 million. Disputes concerning sales agreements, service agreements, and construction agreements take the lead in ISTAC arbitration.

Aside from the rising interest in arbitration, other alternative dispute resolution mechanisms have gained a broader field of application in terms of commercial disputes. For example, since 1 January 2019, mandatory mediation has been introduced as a cause of action to be exhausted before proceeding with court litigation in commercial disputes concerning receivables. According to statistics announced by the Ministry of Justice, between 1 January 2019 and 13 April 2022, 476,030 commercial cases were assigned a mediator, and 223,352 of these cases resulted in settlement. This is expected to increase the use of mediation for commercial disputes having an international nature that are intended to be enforced in Turkey. These statistics and recent developments indicate an upward trend towards alternative dispute resolution mechanisms in general, not limited to arbitration.

ISTAC recently introduced the world's first Mediation-Arbitration Rules (Med-Arb Rules), an alternative dispute resolution procedure with the characteristics of both mediation and arbitration. This mechanism aims to enable the use of both mediation and arbitration in the same proceeding. According to the Med-Arb Rules, parties will first try to resolve their disputes with mediation, and if they cannot settle, arbitration will be initiated to resolve the dispute.

Advantages/Disadvantages

The main advantages of the arbitration over court litigation are:

- Procedural flexibility.
- Ability to select the language of the proceedings.
- Faster resolution of the dispute.
- Cost-effective where the amount in dispute is higher.
- Ability to choose arbitrators who have experience and expertise in the subject matter of the dispute.
- Ability to make the proceedings confidential.
- Easier and wider enforceability.

The main disadvantage of arbitration compared to litigation is that it is generally more costly where the amount in dispute is high.

Compared to arbitration, mediation may be a more cost and time-efficient dispute resolution mechanism. However, the settlement minutes executed by way of international mediation cannot be enforced as easily as arbitral awards, which are subject to a regulated enforcement practice under the New York Convention. However, the Singapore Convention, which entered into force on 11 April 2022 in Turkey and provides an international set of rules facilitating the enforcement of settlement minutes, is expected to pave the way for mediation to become more appealing for cross-border commercial disputes.

Legislative Framework

Applicable Legislation

2. What legislation applies to arbitration? To what extent has your jurisdiction adopted the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law)?

International and domestic arbitrations are governed by different laws. The International Arbitration Code (No. 4686) applies to arbitrations of an international nature that are seated in Turkey or where its application is agreed to by the parties or arbitrators. Domestic arbitration is subject to the Civil Procedural Code (No. 6100), which only applies to arbitrations seated in Turkey with no international element.

Both laws are essentially based on the UNCITRAL Model Law.

Mandatory Legislative Provisions

3. Are there any mandatory legislative provisions? What is their effect?

The provisions of the International Arbitration Code and the Civil Procedure Code are based on the principle of party autonomy. The mandatory provisions for arbitration include:

- The right to a fair trial and the equal treatment of the parties.
- The number of arbitrators must be uneven.
- If interim relief is requested from state courts before initiating arbitration proceedings, arbitration proceedings must be initiated within 30 days (two weeks under the Civil Procedure Code), or interim relief will be removed automatically.
- An action to set aside the arbitral award can be filed within 30 days (one month under the Civil Procedure Code).
- The arbitration award must include the elements listed in the law.

Failing to comply with mandatory legislative provisions can lead to the setting aside of an arbitral award.

4. Does the law prohibit any types of dispute from being resolved through arbitration?

The International Arbitration Code prohibits the following disputes from being resolved through arbitration:

- Disputes arising from or relating to rights *in rem*over immovable properties that are located in Turkey.
- Disputes that cannot be subject to the parties' determination. This means that matters of public policy cannot be subject to arbitration. Having said that, whether a matter concerns public order is decided on a case-by-case basis. In general, disputes relating to bankruptcy, criminal, administrative or family law are not arbitrable.

The Civil Procedural Code shares this approach.

Limitation

5. Does the law of limitation apply to arbitration proceedings?

Under Turkish law, limitation periods are governed by substantive law rather than procedural law. Therefore, limitation periods are determined according to the law applicable to the merits of the case. If Turkish law is applicable, the general limitation period that applies to disputes arising out of contracts is ten years and is triggered when the claim becomes due.

The statute of limitation for tort claims is two years from when the claimant becomes aware of the tortious act, damage and the person committing it. It cannot be more than ten years from the date of the occurrence of the tortious act.

The limitation periods can be frozen/interrupted in certain circumstances.

Arbitration Institutions

6. Which arbitration institutions are commonly used to resolve large commercial disputes?

The main arbitration organisations located in Turkey are the:

- Istanbul Arbitration Centre (ISTAC).
- Istanbul Chamber of Commerce Arbitration and Mediation Centre (ITOTAM).
- Turkish Union of Chambers and Commodity Exchanges Court of Arbitration.
- Istanbul Chamber of Commerce Arbitration Institution.

The ICC International Court of Arbitration is often preferred, especially for cross-border transactions. Among the arbitration institutions in Turkey, ISTAC is most often preferred.

Jurisdictional Issues

> 7. What remedies are available where one party denies that the tribunal has jurisdiction to determine the dispute(s)? Does your jurisdiction recognise the concept of kompetenz-kompetenz? Does the tribunal or the local court determine issues of jurisdiction?

The principle of kompetenz-kompetenz is expressly recognised under Article 7/(H) of the International Arbitration Code for international arbitrations, and under Article 422 of the Civil Procedure Code for domestic arbitration. Therefore, tribunals are empowered to rule on their own jurisdiction. However, the tribunal's decision is not binding, and can be a reason for setting aside the final award.

If a party wishes to challenge the Turkish court's jurisdiction based on a valid arbitration agreement, the party must object in the first response petition at the latest. In such a case, the Turkish courts conduct an analysis of whether the arbitration agreement is valid or not.

Arbitration Agreements

Validity Requirements

> 8. What are the requirements for an arbitration agreement to be enforceable?

Substantive/Formal Requirements

The following substantive requirements must be fulfilled for an arbitration agreement to be valid:

- The parties must have the legal capacity to conclude arbitration agreements.
- The arbitration agreement must be valid under Turkish law (that is, for example, there was no fundamental error, deception or coercion).
- The subject matter must be arbitrable (see *Question 4*).

- The arbitration agreements must refer the disputes out of a specific dispute or relationship.

In terms of formal requirements, an arbitration agreement must be in writing. An arbitration agreement is deemed to exist where:

- The agreement to arbitrate is recorded with either:
  - a document signed by the parties;
  - a letter, fax, telegram or other means of telecommunication exchanged between the parties; or
  - electronic means.

- The existence of an agreement has been alleged in a filed court petition, and the counterparty has not objected.
- A document containing an arbitration agreement is referred to, so it is an inseparable part of the main agreement.

Separate Arbitration Agreement

The parties can choose to either include an arbitration clause in the main contract or sign a separate arbitration agreement.

It is also possible to conclude a valid arbitration agreement by reference to another document (agreement or convention, and so on) containing an agreement to arbitrate (Article 4/3, International Arbitration Code).

Unilateral or Optional Clauses

9. Are unilateral or optional clauses, where one party has the right to choose arbitration, enforceable?

Unilateral or optional clauses are not enforceable under Turkish law.

Third Parties

10. In what circumstances can a party that is not a party to an arbitration agreement be joined to the arbitration proceedings?

Arbitration is based on consent and the principle of privity of contract. Therefore, a non-party to an arbitration agreement cannot be made to a party to arbitration proceedings without the non-party's and all parties' consent.

However, in certain circumstances, a non-party to the arbitration agreement can be treated as a party to it. These circumstances include:

- Agency.
- Piercing the corporate veil.
- Succession relation (that is, for example, where the insurer has the right to sue third parties based on the contract (with arbitration agreement) between the third party and insured).
- Assignment of the claim/contract, where the arbitration clause exists.

11. In what circumstances can a party that is not a party to an arbitration agreement compel a party to the arbitration agreement to arbitrate disputes under the arbitration agreement?

It is not possible to compel a non-party to arbitrate (see *Question 10*).

Separability

12. Does the applicable law recognise the separability of arbitration agreements?

Turkish law recognises the separability presumption (Article 4, International Arbitration Code and Article 412, Civil Procedure Code).

Breach of an Arbitration Agreement

13. What remedies are available where a party starts court proceedings in breach of an arbitration agreement or initiates arbitration in breach of a valid jurisdiction clause?

Court Proceedings in Breach of an Arbitration Agreement

If a party starts court proceedings in breach of a valid arbitration agreement, the defendant can raise an arbitration objection. An arbitration objection must be made in the response petition (Articles 116 and 117, Civil Procedure Code).

Arbitration in Breach of a Valid Jurisdiction Clause

If a party requests arbitration despite a valid agreement on the jurisdiction of state/foreign courts, the objection to the tribunal's jurisdiction must be raised by the counterparty in the first response petition at the latest. See *Question 7*.

14. Will the local courts grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement?

There are no reported cases in which the Turkish courts have granted anti-suit injunctions. The local courts perceive granting of such an injunction to be an intervention of another state's sovereignty.

Arbitrators

Number and Qualifications/Characteristics

15.Are there any legal requirements relating to the number, qualifications and characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practice in your jurisdiction to serve as an arbitrator there?

Except for sector-specific arbitrations, such as insurance arbitration, there are no qualification requirements relating to nationality, licensing, or the education of arbitrators, unless the parties agree otherwise. The number of arbitrators must be uneven (Article 7, International Arbitration Code and Article 415, Civil Procedure Code).

However, if the parties appoint more than one arbitrator, at least one of the arbitrators must have expertise in law with a seniority of five years or more (Article 416, Civil Procedure Code).

Independence/Impartiality

16. Are there any requirements relating to arbitrators' independence and/or impartiality?

An arbitrator must disclose any facts or circumstances that might cast reasonable doubts on their impartiality and independence, both before accepting their duty and during the arbitration proceedings (Article 7/C, International Arbitration Code and Article 417, Civil Procedure Code).

Article 12 of the ISTAC Rules also contains provisions regarding the independence and impartiality of arbitrators.

The IBA Guidelines on Conflicts of Interest in International Arbitration 2014 provide a non-exhaustive list of circumstances in which appointments should be declined or disclosures made to protect against bias. However, these guidelines only apply when the parties have agreed that they apply, or where the tribunal has adopted them.

Appointment/Removal

17. Does the law contain default provisions relating to the appointment and/or removal of arbitrators?

The parties are free to determine the procedure for the appointment/removal of arbitrators. Where the parties fail to do so, the main default mechanisms, contained in Article 416 of the Civil Procedure Code and Article 7 of the International Arbitration Code, are triggered.

Appointment of Arbitrators

If the number of arbitrators is not agreed on by the parties, then the number of arbitrators must be three.

If the number of arbitrators is three, each party appoints one arbitrator, and then the two arbitrators determine the third arbitrator, who acts as the chairman. If one of the parties fails to appoint the arbitrator within 30 days (one month under the Civil Procedure Code) of receipt of the notification, or if the appointed two arbitrators fail to appoint the third arbitrator, the civil court of first instance appoints a third arbitrator at the request of a party.

If the parties agreed to have more than three arbitrators, the arbitrators who will appoint the last arbitrator are determined according to the paragraph above.

Where the parties agreed to have a sole arbitrator but failed to appoint the arbitrator, the civil court of first instance appoints the arbitrator at the request of a party.

Removal of Arbitrators

Article 7/(C) of the International Arbitration Code and Article 417 of the Civil Procedure Code contain provisions for challenging arbitrators. The main grounds for challenging arbitrators are:

- Lack of qualifications agreed between the parties.
- The existence of circumstances and facts that give rise to doubts as to the arbitrators' impartiality and independence.
- The existence of another ground of removal as agreed by the parties.

The parties are free to agree on the procedure to challenge the arbitrators. If no procedure has been agreed, the party who wishes to challenge an arbitrator must submit its request within either:

- 30 days (two weeks under the Civil Procedure Code) of the appointment of the arbitrator or the tribunal.
- 30 days (two weeks under the Civil Procedure Code) of the date when the party learns the facts and circumstances on which the challenge is based.

The party requesting the removal of the arbitrator can challenge a decision on that request before the civil court of first instance.

Procedure

Commencement of Arbitral Proceedings

18. Does the law provide default rules governing the commencement of arbitral proceedings?

Article 10/(A) of the International Arbitration Code and Article 426 of the Civil Procedural Code provide default rules governing the commencement of arbitral proceedings. Arbitral proceedings are deemed to commence when either:

- The claimant notifies the respondent of the appointment of an arbitrator if both parties are to appoint the arbitrators according to the agreement.
- The counterparty receives the request for arbitration if the names of the arbitrators are stated in the agreement.
- An appointment is made by the court or authority entitled to appoint arbitrators.

If one of the parties has obtained interim relief from state courts before initiating arbitration proceedings, arbitration proceedings must be initiated within 30 days (two weeks under the Civil Procedure Code), or interim relief is automatically removed.

Article 10/(D) of the International Arbitration Code and Article 428 of the Civil Procedural Code set out mandatory minimum content requirements for the Request for Arbitration and Statement of Defence.

Applicable Rules and Powers

19. What procedural rules are arbitrators bound by? Can the parties determine the procedural rules that apply? Does the law provide any default rules governing procedure?

Applicable Procedural Rules

Both the International Arbitration Code and Civil Procedural Code contain default procedural rules. However, the majority of these rules are not mandatory, and the parties are free to determine procedural rules in their arbitration agreement or after the arbitration begins. In practice, the parties often agree to apply institutional arbitration rules with their sets of default procedural rules.

Additionally, in both *ad hoc* and institutional arbitrations, the arbitral tribunal also determines the procedural rules applicable to the arbitration.

Default Rules

The mandatory provisions of the code continue to apply even if the parties agree on the application of other procedural rules (Article 8, International Arbitration Code and Article 424, Civil Procedure Code).

Evidence and Disclosure

20. If there is no express agreement, can the arbitrator order disclosure of documents and attendance of witnesses (factual or expert)?

The arbitral tribunal can order document production, compelling the fact and expert witnesses to appear at the hearing and conduct site examinations. In practice, the parties agree that the IBA Rules on the Taking of Evidence apply as guidelines.

The arbitral tribunal lacks coercive powers for these interim orders. However, where the parties are uncooperative, arbitral tribunals can request assistance from local courts. In this case, the courts apply the provisions set out under the Civil Procedure Code. According to Article 195 of the Civil Procedure Code, courts must notify the relevant official authorities or third parties, to produce documents that are not in the parties' possession. Also, the court can compel third parties or authorities to hand in

a document, if it is deemed required to prove the parties' claims (Article 221, Civil Procedure Code). Certain exemptions to production of documents may apply.

Those who abstain from testifying without an applicable exemption are subject to a disciplinary fine for the expenses caused due to not complying with the court's request. Also, if a person abstains from responding to the court's questions or resists the request to take an oath, they can be subject to up to two weeks' imprisonment. Therefore, the same principle may apply to those who abstain from filing a document in line with the court's request. Those who hide an original private document will be sentenced to between one to three years' imprisonment (Article 208, Turkish Criminal Code).

Alternatively, the arbitral tribunals are empowered to draw adverse inferences from a party's refusal to give access to evidence, whether in relation to document production or the appearance of the fact witness.

Evidence

21. What documents must the parties disclose to the other parties and/or the arbitrator? How, in practice, does the scope of disclosure in arbitrations compare with disclosure in domestic court litigation? Can the parties set the rules on disclosure by agreement?

Scope of Disclosure

There is no general duty to disclose documents in cases before the Turkish courts. The leading principle is that no-one is obliged to present a document that is detrimental to them. Although the Turkish courts can order specific documents from the parties, the court is entitled to accept and rely on the other party's statements in such a scenario. The Turkish courts do not ask for the production of documents from a party apart from in exceptional circumstances.

Despite the lack of any specific regulation, arbitral tribunals have the inherent power to order a party to produce documents, either requested by the other party or requested by the tribunal. In practice, the parties generally agree to apply the IBA Rules on the Taking of Evidence in International Arbitration on document production as guidelines. These rules offer the tools for a limited search of evidence (for example, a specific document or specific categories of documents) that is relevant and material to the outcome of the arbitration. There is no obligation to produce a document if production would be burdensome or related to confidential and privileged documents.

Validity of Parties' Agreement as to Rules of Disclosure

The parties can set the rules on disclosure in their agreement.

Confidentiality

22. Is arbitration confidential? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

Arbitration is not automatically confidential. If the parties wish to make the arbitration proceedings confidential, it is advisable to execute a confidentiality agreement. If the parties fail to reach an agreement on confidentiality, a party can make an application to the tribunal to make the proceedings confidential. The scope of the confidentiality obligation depends on the content of the parties' agreement or arbitral tribunals' decision.

In some cases, arbitration institutions' rules may impose a confidentiality obligation. For example, Article 21 of the ISTAC Arbitration Rules suggests that the arbitral proceedings are confidential unless otherwise agreed by the parties.

Courts and Arbitration

23. Will the local courts intervene to assist arbitration proceedings seated in their jurisdiction?

Under Article 3 of the International Arbitration Code and Article 411 of the Civil Procedure Code, the court can only intervene in arbitration proceedings under the circumstances specified by the law.

Local courts assist arbitration proceedings by appointing arbitrators, if the parties cannot agree on the arbitrator to be appointed, or for any other reasons under Article 7 of the International Arbitration Code and the relevant provisions of the Civil Procedure Code. The same provision also allows parties to resort to state courts to order the disqualification of arbitrators.

If the parties fail to agree on the extension of the arbitration period of one year given under Article 10 of the International Arbitration Code and Article 427 of the Civil Procedure Code, one of the parties can request the local court to grant an extension before the time limit for arbitration proceedings expires.

Parties can request interim injunctions enforceable on the counterparty and third parties from local courts during or before the arbitration proceedings. Parties can also seek the assistance of state courts if the counterparty does not comply with interim relief ordered by the tribunal (International Arbitration Code).

The arbitral tribunal and parties to the dispute can seek the assistance of local courts to collect evidence and witness statements. Local courts can compel third parties to collect evidence and witness statements (see *Question 20* and *Question 21*).

If the International Arbitration Code applies, depending on the subject matter of the dispute, the civil or commercial court of first instance where the defendant resides or has a place of business, has jurisdiction over arbitration-related applications. If the defendant has no residence, domicile or workplace in Turkey, Istanbul civil or commercial courts have jurisdiction.

If the Civil Procedure Code applies, the civil or commercial court of first instance of the place of arbitration has jurisdiction. If the place of arbitration is not determined, the civil or commercial court of first instance where the defendant resides or has a place of business has jurisdiction.

24. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceedings by frequent court applications?

Risk of Court Intervention

The local courts do not intervene in arbitration proceedings. The local courts can only intervene in the arbitral process based on very limited grounds, to assist the arbitration.

Delaying Proceedings

There is no specific provision that enables parties to delay arbitral proceedings by making court applications. In principle, the Turkish courts cannot intervene with the arbitration proceedings, and the arbitration proceedings cannot intervene with the Turkish courts. The interventions permitted by the Civil Procedure Code or the International Arbitration Code are intended to facilitate the course of the arbitration proceedings and do not in practice cause a risk of frustration.

Insolvency

25. What is the effect on the arbitration of pending insolvency of one or more of the parties to the arbitration?

Following insolvency, an insolvent company's power of disposition over its assets and rights is transferred to a bankruptcy trustee (composed of the insolvent company's rightful creditors), who pursues any pending arbitrations or claims in the state courts.

If one of the parties loses its capacity to pursue the proceeding, the arbitral tribunal must notify the interested parties, to ascertain whether they intend to continue with the arbitration (Article 11, International Arbitration Code). In the case of insolvency, if the trustee does not continue the arbitration proceedings within six months of notification, then the arbitration tribunal finalises the proceeding without rendering a decision on the merits of the dispute.

Remedies

26. What interim remedies are available from the tribunal?

Interim Remedies

In arbitration proceedings, the arbitral tribunal can order preliminary injunctions or preliminary attachment, and require testimony at the request of a party, unless otherwise agreed. However, arbitral tribunals cannot grant interim remedies that bind third parties or that need to be executed by official authorities or execution offices.

An applicant can also request interim remedies from state courts. Parties can request all forms of interim relief to secure their rights before or during the arbitration proceedings, including remedies binding third parties, and orders to be executed by official authorities or execution offices. However, if a request for interim relief is made before arbitration proceedings and the court grants the interim relief, then the party requesting that relief must request the commencement of arbitration within 30 days (two weeks under the Civil Procedure Code) as of the decision on the interim relief. Otherwise, the interim relief automatically becomes ineffective.

Ex parte/Without Notice Applications

There is no explicit provision empowering arbitral tribunals to order *ex parte* interim reliefs.

Interim reliefs are often sought for dismissing a present danger or risk, so these reliefs can be granted in the absence of the counterparty, for full efficacy. However, where the law allows *ex parte* interim reliefs, it generally provides an explicit rule enabling that power. Considering this and the fact that the International Arbitration Code is silent about *ex parte* interim reliefs, a better approach would be to hear the other party before granting interim relief.

Security

An arbitral tribunal can also order, by its own motion or on a party's request, that the party applying for interim relief must provide security as a precondition of granting the interim relief (Article 6, International Arbitration Code and Article 414, Civil Procedure Code).

27. What final remedies are available from the tribunal?

The remedies available to arbitrator(s) are limited to those compatible with Turkish public policy. Punitive damages are not permissible under Turkish law, and the remedies available to the arbitrator(s) are:

- Damages.
- Performance.
- Establishment, modification or termination of a legal relationship.

- Declaratory judgment.
- Costs.
- Interest.
- Publication of the award in newspapers.

Appeals

28. Can arbitration proceedings and awards be appealed or challenged in the local courts? What are the grounds and procedure? Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitral clause itself)?

Rights of Appeal/Challenge

Arbitral awards cannot be appealed.

A set-aside action against an arbitral award can be filed before the competent regional appellate court within 30 days (one month under the Civil Procedure Code) from the notification of the award or any revision of, interpretation on, or addition to the award by the arbitral tribunal.

Grounds and Procedure

Article 15 of the International Arbitration Code and Article 439 of the Civil Procedure Code provide identical grounds for cancellation of an award:

- Lack of legal standing of a party.
- Invalidity of the arbitration clause.
- Procedural errors in the appointment of arbitrators.
- Failure to grant the arbitral award within the legal period.
- Incompetence by the arbitrator or arbitral tribunal, or an incompetent decision contrary to law.
- Failure to grant the arbitral award for part or the entire claim.
- Procedural errors in the conduct of the arbitration proceedings.
- Unfair treatment of the parties.
- The subject matter of the dispute not being appropriate for arbitration under Turkish law.

- The award is contrary to public order.

Both the International Arbitration Code and Civil Procedure Code identically provide that such actions are considered urgent matters to be resolved by an expedited procedure in comparison with regular state court actions. Under this expedited procedure, the parties can submit all their arguments and evidence with their petitions and cannot submit rebuttal/rejoinder petitions. The court will then render its award without holding a hearing, if possible. If not, the court cannot schedule more than two hearings, except for sessions arranged for witness statements and expert examinations.

The decision of the Regional Appellate Court can be appealed, although only on the grounds listed above.

Waiving Rights of Appeal

A party can waive its right to file an action to set aside the arbitral award in the arbitration agreement or during the procedure (Article 15, International Arbitration Code). This principle is not adopted for domestic arbitrations under the Civil Procedure Code. Under Turkish law, parties cannot waive their rights that have not yet originated. In light of this principle, a party cannot waive its right to file an action to set-aside the arbitral award in the arbitration agreement or during the procedure under the Civil Procedure Code. It can, however, waive its right to appeal the decision rendered in the action to set-aside the arbitral award, once a decision is rendered.

29. What is the limitation period applicable to actions to vacate or challenge an international arbitration award rendered inside your jurisdiction?

A set-aside action against an international arbitral award can be filed within 30 days of the award being notified to the parties. That action automatically suspends the enforcement of the award (Article 15, International Arbitration Code).

Costs

30. What legal fee structures can be used? Are fees fixed by law?

The parties and the arbitral tribunal or the sole arbitrator can agree on the arbitrators' fees, considering the amount of and/or nature of the dispute and duration of the arbitration (Article 16, International Arbitration Code and Article 440, Civil Procedure Code).

Unless agreed otherwise by the parties, the chairman's fee is 10% more than the arbitrator fee paid to each arbitrator.

Arbitrators' fees can also be determined according to international precedents or institutional arbitration rules. For example, a cost calculator can be used (see *ISTAC: Calculator*). If the parties cannot agree on the fees, they are determined in accordance with the yearly tariff prepared by the Ministry of Justice.

Parties can agree on attorneys' fees, but they cannot exceed 25% of the value in dispute (Turkish Advocacy Code). If this condition is fulfilled, the parties can adopt any legal fee structure, including a contingency fee structure (that is, a conditional fee arrangement providing for a bonus in the case of successful litigation), capped fees, or hourly rates. The Union of the Turkish Bar Associations publishes the Minimum Attorneyship Fee Tariff annually, which shows the minimum fees that can be set by the parties (which are reimbursed by the losing party in favour of the successful party's attorney, if any, as the legal fees).

Third party funding is also permitted and available. Interest in and awareness of the availability of third party funding, particularly in arbitration, is increasing.

31. Does the unsuccessful party have to pay the successful party's costs? How does the tribunal usually calculate any costs award and what factors does it consider?

Cost Allocation

Generally, the unsuccessful party pays the costs, including the costs incurred by the successful party. Turkish law endorses the costs-follow-the-event approach (Article 442 al.4, Civil Procedure Code and Article 16D, International Arbitration Code).

However, the costs-follow-the-event approach is not mandatory, and the parties can agree on a different structure. Some arbitral institutions empower the tribunals to take into account the parties' conduct during the arbitration proceedings when determining the allocation of the costs. In these cases, the arbitral tribunal can use its wide discretion to allocate the costs between the parties.

Cost Calculation

The parties can agree on the calculation of costs, but they do not usually do so. In this case, the arbitral institutions' rules on the calculation of costs apply. Costs include:

- The arbitrators' fee (and secretariat fee to be determined by the arbitrators under the Civil Procedure Code),
- Arbitrators' travel fees and other expenses.
- On-site examination expenses and fees paid to experts appointed by arbitrators or those whose assistance has been referred to.
- Travel fees and other expenses of witnesses to the extent approved by the arbitrators.
- Attorney fees determined under the Minimum Attorneyship Fee Tariff in favour of the attorney, if any, of the winning party.
- Litigation costs collected in applications filed before courts.
- Notification expenses concerning the arbitration proceedings.

(Article 441 of the Civil Procedure Code and Article 16 of the International Arbitration Code.)

In practice, the arbitral tribunal asks the parties to make a "cost submission", in which both parties submit the costs incurred in relation to the arbitration.

Factors Considered

In calculating costs, the arbitral tribunal takes into account whether the costs were actually incurred and whether they were reasonable and appropriate to pursue the parties' claims and defences.

Enforcement of an Award

Domestic Awards

> 32. To what extent is an arbitration award made in your jurisdiction enforceable in the local courts?

An arbitral award rendered by a tribunal seated in Turkey is directly enforceable without any further need for an enforcement proceeding before the state courts.

Foreign Awards

> 33. Is your jurisdiction party to international treaties relating to recognition and enforcement of foreign arbitration awards, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)?

Turkey is a party to the New York Convention. Other notable treaties to which Turkey is party include the:

- European Convention on International Commercial Arbitration 1961 (Geneva Convention).
- International Centre for Settlement of Investment Disputes Convention.
- Energy Charter Treaty.

All international treaties to which Turkey is a party are considered as domestic law and *lex specialis* overriding other laws which only govern general matters (*lex generalis*).

Turkey has two reservations to the New York Convention, which provide that the New York Convention applies only to:

- Recognition and enforcement of awards made in the territory of another contracting state.
- Disputes arising out of legal relationships that are considered commercial under Turkish law.

The New York Convention is not applied to the recognition and enforcement of foreign arbitral awards that do not satisfy these criteria.

The International Civil and Procedural Law contains provisions for enforcement of foreign arbitral awards. Recognition and arbitral awards that do not fall within the scope of the New York Convention are subject to the relevant provisions of the International Civil and Procedural Law. These are very similar to the relevant provisions of the New York Convention.

34. To what extent is a foreign arbitration award enforceable?

A foreign arbitral award is enforceable if it satisfies the conditions stipulated under Article V of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) or the very similar conditions under Article 62 of the International Civil and Procedural Law.

Among all the conditions of enforceability, Turkish courts give particular importance to public policy. The term "public policy" is not explicitly defined by Turkish law and, therefore, the standards for refusing recognition or enforcement on public policy grounds mostly depend on legal practice. However, the concept of public policy is changing over time, embracing a trend towards an enforcement-friendly approach. Indeed, contrary to the past practices of Turkish courts, public policy is now interpreted narrowly and only the awards that contradict indispensable and fundamental Turkish legal principles are considered to violate public policy.

Common law awards are usually enforceable in Turkey. However, punitive damages may be considered against public policy.

A request for enforcement of a foreign arbitral award is filed by petition. The civil or commercial court where the defendant temporarily or permanently resides has jurisdiction over enforcement proceedings. In the absence of such a place, the claimant can file enforcement proceeding before the courts of Istanbul, Izmir or Ankara. On notification of the petition, the defendant has two weeks to file its responses, with an opportunity to request an extension for a further two weeks (Civil Procedure Code). Whether the application fee that the applicant must deposit when filing the action is a fixed or proportionate fee is controversial in practice. However, most courts apply the fixed application fee (see *Question 1*).

35. What is the limitation period applicable to actions to enforce international arbitration awards rendered outside your jurisdiction?

The limitation period applicable for filing an action to enforce an international arbitration award is not determined by the procedural rules of Turkish law. However, the Execution and Bankruptcy Act foresees a ten-year limitation period for the enforcement of judgments. Although the relevant provision of the Execution and Bankruptcy Act does not refer to international arbitration awards directly, it is advisable to file actions to enforce international arbitration awards within ten years of the finalisation of the arbitration award.

Length of Enforcement Proceedings

36. How long do enforcement proceedings in the local court take, from the date of filing the application to the date when the first instance court makes its final order? Is there an expedited procedure?

Enforcement proceedings are subject to an expedited procedure. Accordingly, the parties are not allowed to file rejoinder or rebuttal petitions. Since the court does not examine the merits of the case and only conducts a procedural examination, the final order is expected to be given in six to 12 months by the first instance court and in one to two years by the regional appeal court, which is followed by a one to two years final appeal before the Court of Cassation.

Reform

37. Are any changes to the law currently under consideration or being proposed?

Currently, there is no specific court or chamber in place with competence to hear claims related to enforcement of arbitral awards. Therefore, appeal examinations of these disputes fall under the scope of duty of the relevant chamber of the Court of Cassation, depending on the nature of the dispute.

Enforcement and cancellation of arbitral awards are generally examined by the 11th, 15th, 19th and 23rd Civil Chambers of the Court of Cassation, all of which have no particular specialisation in arbitration. More than half of arbitration-related cases, including those relating to insurance and freight, are dealt by the 11th Chamber of the Court of Cassation specialised in commercial law and obligations law.

Considering that a civil chamber receives 20,000 case files (inclusive of the transferred files from previous years) on average per year, civil chambers cannot gain expertise on occasionally encountered enforcement claims. Examination of arbitration-related cases by different chambers not only prevents civil chambers from gaining adequate experience in this field, but also leads to contradictory decisions.

The lack of specialisation clearly poses a significant obstacle before the development of arbitration in Turkey, which is an indispensable mechanism for the business world. Therefore, Turkish legal scholars and practitioners have been recommending that a single civil chamber is assigned to resolve all kinds of disputes related to arbitration, regardless of the nature of the contract or commercial relationship. Indeed, this is the only way to ensure that uniform and foreseeable precedents in line with contemporary practices are in place. Although this recommendation has been the unchanged agenda of scholars and practitioners for years, the same appetite has not been observed in the legislative area. Therefore, establishment of specialised chambers is not expected in the short term.

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